Supreme Court, U.S.
FILED
07-601 OCT 31 2007
OFFICE OF THE CLERK

No.

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Stephen J. Williams
Petitioner
12 September Road
Storrs, Connecticut 06268-2806
USA
+1-860-450-1288

QUESTIONS PRESENTED

Whenever a member of the Bar of the District of Columbia Court of Appeals

> has been suspended or disbarred by [another] disciplining court..., the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding.

D.C. Bar Rule XI, § 11(d).

The questions are:

1. Whether the Court of Appeals denied Petitioner procedural due process by providing neither a pre-suspension hearing nor a reasonably prompt post-suspension hearing nor *any* hearing whatsoever?
2. Whether the Court of Appeals was obligated to "make an independent examination of the whole record" in order to assure itself that "the judgment [of the foreign court] does not constitute a forbidden intrusion on the field of free expression"?
3. Whether considerations of public policy and the sound administration of justice require this Court to exercise its jurisdiction where a lower federal court has committed egregious error by exceeded its Congressionally delineated jurisdiction?

PARTIES TO THE PROCEEDING

The Petitioner is Stephen J. Williams, an attorney who is currently summarily suspended in the District of Columbia.

The Respondents in this proceeding are the District of Columbia Court of Appeals, Chief Judge Eric T. Washington, Associate Judges Michael W. Farrell, Vanessa Ruiz, Inez Smith Reid, Stephen H. Glickman, Noël Anketell Kramer, John R. Fisher, Anna Blackburne-Rigsby, Phyllis D. Thompson, Senior Judges Theodore R. Newman, William C. Pryor, Annice M. Wagner, John W. Kern, III, James A. Belson, Warren R. King, John M. Ferren, Frank Q. Nebeker, John M. Steadman, John A. Terry, Frank E. Schwelb (all in their capacity as judges of the District of Columbia Court of Appeals) and Bar Counsel Wallace E. "Gene" Shipp Jr. (in his capacity as the District of Columbia bar counsel).

TABLE OF CONTENTS

ORDER FOR REVIEW 1
JURISDICTION 1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED 2
STATEMENT OF THE CASE 2
A. Relevant facts 2
B. Relevant proceedings in the District of Columbia 3
C. Prior proceedings in the Supreme Court 4
REASONS FOR GRANTING THE WRIT 5
A. This Petition is cert-worthy. 5
B. The Court of Appeals denied Petitioner procedural due process by providing neither a pre-suspension hearing nor a reasonably prompt post-suspension hearing nor any hearing whatsoever. 9
C. The Court of Appeals' summary suspension rule is incompatible with this Court's mandate that "an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" 21
D. In this exceptional situation where egregious error has been committed, considerations of public policy and the sound administration of justice require the Supreme Court to exercise its jurisdiction. 24
E. Jurisdiction and justiciability. The decision below is final and is not moot. 27
CONCLUSION 33

CASES

Amalgamated Food Emp. Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968) 28
Barry v. Barchi, 443 U.S. 55 (1979) 9
Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) 9
Bolling v. Sharpe, 347 U.S 497 (1954) 9
Boos v. Barry, 485 U.S. 312 (1988) 21
Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485 (1984) 23
Bruner v. United States, 343 U.S. 112 (1952) 27
Butterworth v. Smith, 494 U.S. 624 (1990) 22
Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) 14
Central Union Tel. Co. v. Edwardsville, 269 U.S 190 (1925) 4
Codd v. Velger, 429 U.S. 624 (1977) 11
Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949) 30
Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1 (2003) 12
Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978) 31
Department of Banking v. Pink, 317 U.S. 264 (1942) 28
Dixon v. Love, 431 U.S. 105 (1977) 17
Easley v. Cromartie, 532 U.S. 234 (2001) 24
Ex parte Garland, 4 Wall. 333 (1866) 9, 10, 17, 25
Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981) 31
First Nat. Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 32
Fisher v. United States, 328 U.S. 463 (1946) 25
General Motors Corp. v. District of Columbia, 380 U.S. 553 (1965) 7

Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991) 22, 23
Gilbert v. Homar, 520 U.S. 924 (1997) 11, 13
Goss v. Lopez, 419 U.S. 565 (1975) 19
Grannis v. Ordean, 234 U.S. 385 (1914) 10
Greenbelt Cooperative Publishing Assn. v. Bresler, 398 U.S. 6 (1970) 23
In re Cummings, 466 A.2d 1224 (D.C., 1983) 26
In re D.M., 771 A.2d 360 (D.C., 2001) 30
In re Kerr, 424 A.2d 94 (D.C., 1980) 12, 27
In re Ledbetter, 50 S.Ct. 349 (Mem) (1930) 8
In re Malvin, 466 A.2d 1220 (D.C., 1983) 16
In re Oliver, 333 U.S. 257 (1948) 10, 17, 23
In re Patrick, 50 S.Ct. 349 (Mem) (1930) 8
In re Powell, 389 U.S. 924 (1967) 20
In re Powell, 512 U.S. 1202 (1994) 20
In re Richardson, 692 A.2d 427 (D.C., 1997), *cert. denied*, 522 U.S. 1118 (1998), *rehearing denied*, 523 U.S. 1103 (1998) 7, 26
In re Richardson, 759 A.2d 649 (D.C., 2000) 7, 20
In re Roche, 448 U.S. 1312 (1980) 31
In re Ruffalo, 390 U.S. 544 (1967), *modified on other grounds*, 392 U.S. 919 (1968) 10, 17
In re Velasquez, 507 A.2d 145 (D.C., 1986) 11, 16
In re Zakroff, 2007 WL 3096887 (D.C., 25 October 2007) 19, 31
In re Zdravkovich, 831 A.2d 964 (D.C., 2003) 7, 12
Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978) 23
Laughlin v. Wheat, 95 F.2d 101 (D.C. Cir., 1937) 26, 27
Local No. 438 Const. and General Laborers' Union AFL-CIO v. Curry, 371 U.S. 542 (1963) 30
M.A.P. v. Ryan, 285 A.2d 310 (D.C., 1971) 25, 27
Mathews v. Eldridge, 424 U.S. 319 (1976) 14, 18, 19
Meyer v. Nebraska, 262 U.S. 390 (1923) 9

Morrissey v. Brewer, 408 U.S. 471 (1972) 14
NAACP v. Claiborne Hardware, Co., 458 U.S. 886 (1982) 23
New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 23
North Carolina v. Rice, 404 U.S. 244 (1971) 7
Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74 (1930) 20
Palmore v. United States, 411 U.S. 389 (1973) .. 12, 27
Paul v. Davis, 424 U.S. 693 (1976) 9, 10
Randall v. Brigham, 7 Wall. 523 (1868) 10, 17
Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) 23
Sacher v. United States, 343 U.S. 1, *rehearing denied*, 343 U.S. 931 (1952) 18
Selling v. Radford, 243 U.S. 46 (1917) 12
Spencer v. Kemna, 523 U.S. 1 (1998) 32
Spevack v. Klein, 385 U.S. 511 (1967) 17
St. Amant v. Thompson, 390 U.S. 727 (1968) 23
State ex rel. Oklahoma Bar Assn. v. Minter, 2001 Ok. 69, 37 P.2d 763 (2001) 21
Whalen v. United States, 445 U.S. 684 (1980) 25
Wisconsin v. Constantineau, 400 U.S. 433 (1971) 10
Wolff v. McDonnell, 418 U.S. 539 (1974) 11
Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626 (1985) . 10, 21

STATUTES

28 U.S.C. § 1257 1
D.C. Code § 11-101 24
D.C. Code § 11-102 1
D.C. Code § 11-2501 27
D.C. Code § 11-2502 12
D.C. Code § 11-2503(b) 26

RULES

D.C. Bar Rule XI, § 3(c) 15, 16
D.C. Bar Rule XI, § 11 ..... 7, 26
D.C. Bar Rule XI, § 11(b) 29
D.C. Bar Rule XI, § 11(c) 11, 12
D.C. Bar Rule XI, § 11(d) ..... passim
D.C. Bar Rule XI, § 11(e) 29
D.C. Bar Rule XI, § 14(g) 28
D.C. Ct. App. R. 35(c) 29
D.C. Ct. App. R. 40 29
Sup. Ct. R. 8.1 ..... 8, 20

TREATISES

ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 22 7
Boskey and Gressman, "The Supreme Court's New Rules for the Nineties", 128 F.R.D. 295 11
Lynne Tuohy, *Rowland Sowed Judicial Scandal*, Hartford Courant, 30 April 2006 22
Mr. Rowland: After The Fall, Hartford Courant, 20 June 2007 22

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I ..... passim
U.S. Const. amend. V 4, 9, 19
U.S. Const. amend. XIV 9
U.S. Const. art. I, § 8, cl. 17 24

ORDER FOR REVIEW

The District of Columbia Court of Appeals ("Court of Appeals") suspended Petitioner by order dated 6 March 2007. (App. A, p. App. 1.) That court denied rehearing by order dated 12 July 2007. (App. B, p. App. 4.) Suspension was summary. There are no opinions.

JURISDICTION

This Court has jurisdiction to review by writ of certiorari "[f]inal judgments or decrees rendered by the [District of Columbia Court of Appeals] ... where the validity of a statute of [the District] is drawn in question on the ground of its being repugnant to the Constitution ... or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution". 28 U.S.C. § 1257. See also D.C. Code § 11-102.

Petitioner seeks review of the Court of Appeals' order summarily suspending his right to practice law in the District of Columbia which, as demonstrated below, violated the First and Fifth Amendments to the United States Constitution and exceeded the Congressionally delineated authority of the Court of Appeals.

This Petition is timely in that the Chief Justice has ordered that this Petition may be filed no later than 31 October 2007. (Application No. 07A282.)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The relevant portions of the U.S. Const. Amend. I and V; D.C. Code § 11-2503(b); D.C. Bar Rule XI, §§ 3(c), 11 and 14 and this Court's Rule 8.1 are set out in the Appendix starting at App. 6.

STATEMENT OF THE CASE

A. Relevant facts

In a highly unusual non-adversarial proceeding, on 18 July 2005, Petitioner was summarily suspended by a Connecticut Superior Court judge claiming the inherent power to do so despite Petitioner never having previously appeared before him. That order is now on appeal before the Connecticut Appellate Court. *State of Connecticut v. Stephen J. Williams.* (Docket No. AC 27416.)

Three weeks later, on 8 August 2005, the Connecticut Statewide Bar Counsel sent a copy of the order to the District of Columbia Bar Counsel ("Bar Counsel"). (Bar Counsel's Opposition to Respondent's Motion that the Board Determine that Respondent Promptly Notified the Bar Counsel, p. 1.) Ten months after that, the Bar Counsel petitioned the Court of Appeals to suspend Petitioner pursuant to D.C. Bar Rule XI, § 11(d) (12 June 2006 Letter of the Bar Counsel.) And nine months after that, on 6 March 2007, the Court of Appeals did summarily suspend Petitioner. (6 March 2007 Order.)

The District of Columbia order also commenced a reciprocal discipline proceeding before the Board on Professional Responsibility ("Board") to determine whether "identical, greater or lesser discipline" should be imposed. (6 March 2007 Order, p. 1, ¶ 6.) In that proceeding, the Bar Counsel sought Petitioner's suspension for six months. The Board agreed, recommending that the Court of Appeals suspend Petitioner for six months. (3 October 2007 Board Report and Recommendations, pp. 1 and 19.)

Nonetheless, almost eight months after the Court of Appeals ordered his summary suspension, Petitioner remains suspended with no expectation that his suspension will end anytime soon.

B. Relevant proceedings in the District of Columbia

Following Bar Counsel's petition for his suspension, Petitioner sought a stay of the suspension from the Court of Appeals. (14 July 2006 Motion for Stay Pending Further Proceedings.) In that motion he highlighted the due process issues and asked the Court of Appeals to afford him an opportunity to properly address those issues. Petitioner wrote that "[i]f [the Court of Appeals] now grants the Bar Counsel's Proposed Order without first affording Respondent a stay sufficient to allow him to pursue further review of that Order then [the Court of Appeals] will also be denying [Petitioner] the opportunity to be heard on the due process issue." (14 July 2006 Motion for Stay Pending Further Proceedings, p. 6.) Conversely, Bar Counsel argued that the issue was "not yet ripe for review because

[the Court of Appeals had] not yet ordered an interim suspension." (Bar Counsel's Reply to Respondent's Opposition to Bar Counsel's Proposed Order, p. 1, note 1.) Petitioner's motion was denied by the same order which summarily suspended him. (6 March 2007 Order, p. 1, ¶ 4.) See *Central Union Tel. Co. v. Edwardsville*, 269 U.S 190, 194-5 (1925).

Following Petitioner's suspension, Petitioner fully argued his federal Fifth Amendment due process, First Amendment protected speech and jurisdictional claims in his Petition for Rehearing. (2 April 2007 Petition for En Banc Rehearing.) The federal claims were necessarily decided by the Court of Appeals when that court denied Petitioner's Petition. (12 July 2007 Order).

C. Prior proceedings in the Supreme Court

On 3 October 2007, Chief Justice Roberts ordered that Petitioner's petition for writ of certiorari be filed on or before 31 October 2007. (Application No. 07A282.)

On 29 October 2007, Petitioner asked the Chief Justice to stay Petitioner's suspension pending the disposition of this Petition. (29 October 2007 Application For a Stay of Enforcement of the Judgment Below Pending the Filing and Disposition of a Petition for a Writ of Certiorari to the District of Columbia Court of Appeals.)

REASONS FOR GRANTING THE WRIT

A. This Petition is cert-worthy.

This petition raises constitutional issues which go to the very heart of the way our government functions. The requirement for procedural due process and the freedom to speak critically of our government are two of the most fundamental checks on governmental power. This case questions whether it is possible for our government to not just delay a deprivation hearing until a reasonable period after the deprivation but to unnecessarily deny any hearing whatsoever. This question is made all the more critical given that it involves First Amendment protected speech and, in particular, political speech critical of the administration of government.

The circumstances are particularly egregious. In a highly unusual non-adversarial proceeding, Petitioner was summarily suspended by a Connecticut judge after a fellow judge had ordered that a hearing be held in a criminal matter which promised to proved embarrassing to that judge's administration. Despite that suspension still being under appeal in Connecticut, the Court of Appeals then summarily suspended Petitioner under a rule which mandates suspension "forthwith" predicated solely on a showing of foreign discipline. Petitioner asked the Court of Appeals to delay the suspension so that he could address whether he had "received from the Connecticut proceedings all of the due process he was due" as well as to allow Petitioner "to be heard on the due process issue." (14 July 2006

Motion for Stay Pending Further Proceedings.) The Court of Appeals was unmoved. Eight months later, the motion was denied and Petitioner summarily suspended. (6 March 2006 order, p. 1, ¶ 4.) Petitioner has now been suspended for almost eight months and has no way of knowing when his indefinite suspension will finally end. Notably, Petitioner has already been suspended beyond the six month period requested by Bar Counsel. Other District of Columbia attorneys have at times remained under summary suspension for years.

This case presents a 'good vehicle'. The issues are simple and clear. This is not a case that is fact-dependent. Petitioner was suspended in Connecticut. He was then suspended in the District of Columbia based solely upon the Connecticut suspension and without any opportunity whatsoever to address the propriety of the Connecticut proceeding. This was done according to a rule which mandated his suspension. No other facts are necessary to the proper presentation of the issues. Because the Court of Appeals' acted summarily, there is not, and cannot be, an independent local legal basis for that court's order. Finally, despite the summary nature of the Court of Appeals' proceedings, all federal issues were fully preserved – both through motion made pre-suspension and again through a petition for rehearing made post-suspension.

Despite the Court of Appeals' summary suspension rule having been on the books for 18 years, and there having been hundreds of similar suspensions, Petitioner has been able to find only one single petition to this Court that challenged D.C. Bar Rule XI, § 11(d). *In re Richardson*, 692 A.2d 427 (D.C.,

1997), *cert. denied*, 522 U.S. 1118 (1998), *rehearing denied*, 523 U.S. 1103 (1998). Mr. Richardson was summarily suspended under Rule XI, § 11(d) for 22 months. *In re Richardson*, 759 A.2d 649, 651 (D.C., 2000). Nonetheless, by the time Richardson filed his petition in this Court, his indefinite suspension had been supplanted by a definite suspension. His challenge was both ou -of-time and moot. 28 U.S.C. 2101(c); *North Carolina v. Rice*, 404 U.S. 244 (1971). Petitioner is unaware of any similar cases 'in the pipeline.' But if there were such a case, it is likely to share Richardson's jurisdictional and justiciability problems as most attorneys are more interested in challenging their final discipline than in mounting a constitutional attack on the initial summary discipline. Therefore, this case presents not just the best opportunity to address this issue, but probably the *only* opportunity to address it.

This case "has an impact not confined to the Potomac's shores". *General Motors Corp. v. District of Columbia*, 380 U.S. 553, 556 (1965). The District of Columbia is a trend setting bar as regards reciprocal attorney discipline.[1] The Court of Appeals' D.C. Bar Rule XI, § 11 is based upon Rule 22 of the ABA Model Rules for Lawyer Disciplinary Enforcement

---

[1] The number of reciprocal discipline cases in the District dwarf the number in all other jurisdictions. *In re Zdravkovich*, 831 A.2d 964, 968 (D.C., 2003). In 2002, there were 31 such cases before the Court of Appeals. Id. The number is growing. A computer search turned up approximately 40 District of Columbia reciprocal discipline cases in 2006. "In comparison, the California Bar, which includes more than twice as many members, had 14 cases in 2001 and averages only 12 reciprocal discipline cases per year; the Michigan Bar had six such cases in 2002, and the Maryland Bar had only one." Id., note 6.

which is a national standard that has as its goal, avoiding "[t]he spectacle of a lawyer disbarred in one jurisdiction [being] permitted to practice elsewhere". (Comment to Rule 22.) While the summary suspension provisions of Rule XI, § 11(d) do not have a parallel within the Model Rules, there is a very similar provision to be found in this Court's own Rule 8.1:

> Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered.

Thus, this petition is, in effect, not just challenging the practice of summary suspension in the District of Columbia, but also the practice of summary suspension in *this* Court.

Needless to say, this Court has a heightened duty as regards rules that it has promulgated in its rule making capacity. This body is unique in that there are *no* external checks on its rulemaking power. Therefore, this Court has a duty to examine closely cases, such as this one, which raise significant constitutional challenges to those rules.[2]

---

[2] Summary suspension in this Court appears to date back to 1930. See *In re Patrick*, 50 S.Ct. 349 (Mem) (1930) and *In re Ledbetter*, 50 S.Ct. 349, 350 (Mem) (1930). Yet, amazingly, the Court appears to have *never* judicially considered the constitutionality of its own summary suspension

B. The Court of Appeals denied Petitioner procedural due process by providing neither a pre-suspension hearing nor a reasonably prompt post-suspension hearing nor any hearing whatsoever.

The Fifth Amendment mandates that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law". The mandate constrains action by the government of the District of Columbia. *Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954).[3]

Petitioner has a "property" interest in his license to practice law. *Barry v. Barchi*, 443 U.S. 55, 64 (1979). As a lawyer, Petitioner also has a "liberty" interest in "engag[ing] in [one] of the common occupations of life". *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Petitioner has a heightened "liberty" interest where, as is the circumstance here, his "good name, reputation, honor, or integrity is at stake *because of what the government is doing to him*". *Paul v. Davis*, 424 U.S. 693, 708 (1976) quoting

---

rule. Nonetheless, this is not be the first occasion that the Court's rules regulating attorneys has been brought into question. See *Ex parte Garland*, 4 Wall. 333, 381 (1866), where the Court determined that a portion of its rule had been "un advisedly adopted".

[3] The Fourteenth Amendment similarly provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law". Because of the almost identical wording of this portion of the two amendments, the Court views interpretations of the two provisions as interchangeable. *Paul v. Davis*, 424 U.S. 693, 702, note 3 (1976).

Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (Emphasis supplied in *Paul*).

"The fundamental requisite of due process of law is the opportunity to be heard". *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). This applies no less to lawyers. *Ex parte Garland*, 4 Wall. 333, 378 (1866). "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense – a right to his day in court – are basic in our system of jurisprudence." *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 671 (1985) (Brennan, J., concurring in part, dissenting in part), quoting *In re Oliver*, 333 U.S. 257, 273 (1948). See also *In re Ruffalo*, 390 U.S. 544, 550 (1968), *modified on other grounds*, 392 U.S. 919 (1968). quoting *Randall v. Brigham*, 7 Wall. 523, 540 (1868) ("notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence.").

D.C. Bar Rule XI, § 11(d) mandates the suspension of the attorney "forthwith" based solely on a showing of discipline in a foreign jurisdiction:

> Upon receipt of a certified copy of an order demonstrating that an attorney ... has been suspended or disbarred by a disciplining court outside ... the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding....

Under the Court of Appeals' rule, no hearing is afforded.[4] Suspension is summary.[5]

"The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests." *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). "[A]nalysis as to liberty parallels the accepted due process analysis as to property." Id. On the other hand, this Court has also endorsed deprivations without some type of hearing in cases where there would be nothing for the court to consider. *Codd v. Velger*, 429 U.S. 624, 627-28 (1977); *Gilbert v. Homar*, 520 U.S. 924, 933 (1997). So a hearing is not *always* mandated in *every* proceeding.

However, the Court of Appeals premises reciprocal discipline on "another jurisdiction ha[ving] already afforded the attorney a disciplinary procedure that includes notice, an opportunity to be heard [and] sufficient proof of misconduct". *In re Velasquez*, 507 A.2d 145, 147 (D.C., 1986). See D.C. Bar Rule XI, § 11(c)(1) and (2). Indeed, these are issues which this Court has previously highlighted as important issues

---

[4] The Court of Appeals' rule appears to have been modeled on this Court's Rule 8.1. At the time the District of Columbia rule was promulgated, this Court's rule still provided for suspension "forthwith". Boskey and Gressman, "The Supreme Court's New Rules for the Nineties", 128 F.R.D. 295, 310.

[5] "'[S]ummary' ... refers to a procedure which dispenses with the formality, delay and digression that would result from the issuance of process, service of complaint and answer, holding hearings, taking evidence, listening to arguments, awaiting briefs, submission of findings, and all that goes with a conventional court trial." *Sacher v. United States*, 343 U.S. 1, 9 (1952).

to consider prior to the imposition of reciprocal discipline. *Selling v. Radford*, 243 U.S. 46, 51 (1917). Another important issue is whether "[t]he imposition of the same discipline by the Court would result in grave injustice". Rule XI, § 11(c)(3). See *Selling*, Id. And yet another consideration, unique to the District of Columbia, is whether the conduct "constitute[s] misconduct in the District of Columbia". Rule XI, § 11(c)(5). In fact, there are five possible defenses which the Court of Appeals is required to consider before imposing reciprocal discipline. *In re Zdravkovich*, 831 A.2d 964, 698 (D.C., 2003). As a result, some sort of hearing *is* necessary to afford the attorney an opportunity to address the issues relevant to reciprocal discipline. *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 7 (2003).

Yet it is plain that no pre-suspension hearing is provided in the District of Columbia. D.C. Bar Rule XI, § 11(d) mandates that an attorney be suspended "forthwith" and clearly precludes such a hearing. Nor can the foreign proceeding itself be pointed to as a pre-suspension hearing. The issues of whether the foreign tribunal afforded minimum due process and whether there is sufficient proof of misconduct are both issues which must be addressed in review of the foreign proceeding. And certainly, the foreign tribunal will not have considered whether the conduct was misconduct in the District of Columbia. Furthermore, the power of the Court of Appeals to discipline derives solely from Congress. *In re Kerr*, 424 A.2d 94, 98-99 (D.C., 1980) citing *Palmore v. United States*, 411 U.S. 389, 397 (1973); D.C. Code § 11-2502. The authority granted the Court of Appeals is non-delegable. Only the judges of that court are able to make the determination as to whether a

District of Columbia attorney should be disciplined. A foreign tribunal cannot make that determination on behalf of the Court of Appeals. This is especially so where the court is required to exercise its broad discretion, as it clearly must do in determining whether the imposition of reciprocal discipline "would result in grave injustice". By acting ministerially, rather than judicially, the Court of Appeals is annulling Congresses mandate.

"This Court has recognized, on many occasions, that where a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." *Gilbert v. Homar*, 520 U.S. at 930. The order suspending the attorney, as mandated by D.C. Bar Rule XI, § 11(d), also initiates a fresh proceeding before the Board. (6 March 2007 Order.) However, that Board hearing cannot be viewed as a substitute for a pre-suspension hearing. Firstly, the automatic suspension order is entered by the Court of Appeals and the Board lacks jurisdiction to vacate that court's orders. Secondly, the roll of the Board is solely to recommend. D.C. Bar Rule XI, § 11(e). The Board has no power to determine. Thirdly, the Board is limited to considering whether "identical, greater or lesser discipline should be imposed". (6 March 2007 Order, p. 2, ¶ 1.) See also D.C. Bar Rule XI, § 11(e). The Board is not charged with recommending whether the Court of Appeals' summary suspension should be vacated.

Once the Board concludes its investigation, it files its "Report and Recommendations" to the Court of Appeals. This initiates a fresh proceeding before that court. Even then, the issue is not whether the court's

initial suspension should be vacated. The Court of Appeals never considers that question. Rather, the question is whether "identical, greater or lesser discipline should be imposed". See also D.C. Bar Rule XI, § 11(e). Only once a determination is reached on the Board's Report and Recommendations does that determination merge with the initial summary suspension. This finally moots the question of whether the Court of Appeals' initial suspension was appropriate.

It is well accepted that "'[d]ue process' ... is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961). Indeed, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Perhaps, therefore, it could be argued, applying this Court's oft-quoted *Eldridge* framework, that in this particular circumstance, due process is flexible enough that Petitioner need not be afforded either a pre-suspension, nor reasonably prompt post-suspension, nor any hearing whatsoever and that Petitioner will ultimately have been afforded sufficient due process once the Court of Appeals acts on the Board's Report and Recommendations? The facts belie the argument.

The Connecticut Statewide Bar Counsel advised the District of Columbia Bar Counsel of Petitioner's Connecticut discipline by letter dated 8 August 2005. (5 April 2007 Statement of Bar Counsel.) Yet Bar Counsel did not initiate proceedings before the Court of Appeals until 12 June 2006. (12 June 2006 Letter of Bar Counsel.) In turn, the Court of Appeals did not

act to suspend Petitioner until 6 March 2007. (6 March 2007 Order.) A total of 19 months passed between Bar Counsel first being informed of the Connecticut discipline and the Court of Appeals finally acting to suspend Petitioner. [6]

Firstly, this extraordinarily long delay controverts any claim that providing a minimal pre-suspension hearing was impractical. Indeed, there is every reason to believe that the District of Columbia could have completed the entire disciplinary process, perhaps twice over, in this 19 month period.

The 19 month delay also makes abundantly clear that Bar Counsel and the Court of Appeals felt no sense of haste. Indeed, the Bar Rules provide a separate procedure for a temporary suspension if "an attorney appears to pose a substantial threat of serious harm to the public". D.C. Bar Rule XI, § 3(c). The Bar Counsel did not proceed under Rule XI, § 3(c) and has never argued that Petitioner presents a threat to the public. Notably, the due process afforded Petitioner does not begin to compare to that afforded an attorney where the attorney is alleged to pose a threat to the public. In such a proceeding, the Court of Appeals has no mechanism for suspension without a pre-suspension hearing. In fact, the rule specifically provides for the appointment of a special master to investigate disputed issues of fact. Even in cases where an attorney has been proven to be a

---

[6] The delay in Petitioner's case appears to be longer than the delay for many other District of Columbia reciprocal discipline cases. But in those cases where information is available, there has been a considerable delay between Bar Counsel's initial filing with the Court of Appeals and the issuance of that court's order suspending the attorney.

substantial threat, the attorney is *still* only precluded "from accepting any new cases or other legal matters". Inexplicably, the rule provides that the Court of Appeals "shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the order". Indeed, shortly after implementing Rule XI, § 3(c), the Court of Appeals

> emphasize[d] that a temporary suspension is an extreme measure, reserved for exceptional cases, and that the Board must therefore make a strong showing of "great public harm" as required by the rule. A temporary suspension should not be sought, and will not be granted, in a routine disciplinary case.

In re Malvin, 466 A.2d 1220, 1223 (D.C., 1983). However, in the case of reciprocal discipline, suspension is not just routine, but automatic. How can it possibly be argued that all attorneys in reciprocal discipline cases should be afforded substantially less procedural due process than the Court of Appeals affords to attorneys who do actually "pose a substantial threat of serious harm to the public"?

The motivation for imposing summary reciprocal discipline is plainly not the protection of the public. Rather, the Court of Appeals, in a frequently quoted paragraph, suggests the real motivation: "there is merit in the idea of granting due deference – for its sake alone – to the opinions and actions of a sister jurisdiction with respect to attorneys over whom we share supervisory authority." *In re Velasquez*, 507 A.2d at 147. Clearly, the intent is to impose

reciprocal discipline based solely on a showing of foreign discipline and without any genuine consideration of due process. The summary suspension provision contained in D.C. Bar Rule XI, § 11(d) achieves exactly this end.

Yet this Court has clearly stated that:

> Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. *Ex parte Garland*, 4 Wall. 333, 380; *Spevack v. Klein*, 385 U.S. 511, 515. He is accordingly entitled to procedural due process, which includes fair notice of the charge. See *In re Oliver*, 333 U.S. 257, 273. It was said in *Randall v. Brigham*, 7 Wall. 523, 540, that when proceedings for disbarment are 'not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence.'

In re Ruffalo, 390 U.S. at 550. [7] Notably, *Ruffalo* specifically excludes summary discipline except for matters occurring "in the presence of the judges" and, obviously, reciprocal discipline always involves matters occurring outside the presence of the judges. But by delaying indefinitely this Court's due process

---

[7] Attorney disciplinary proceedings are neither civil nor administrative. Rather, they are "adversary proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. at 551. Indeed, the Court, in *Dixon v. Love*, 431 U.S. 105, 115 (1977), was careful to differentiate "procedural due process in the administrative setting" from that expected in the "judicial model".

mandate, the Court of Appeals is able to implement its stated policy of "due deference – for its sake alone". Any procedural due process that the Court of Appeals ultimately might afford becomes meaningless once the suspension has been served. As this Court has said, "[s]ummary punishment always, and rightly, is regarded with disfavor". *Sacher v. United States*, 343 U.S. 1, 8, *rehearing denied*, 343 U.S. 931 (1952). [8]

This Court wrote in *Eldridge* that:

> "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (internal citations and quotation marks omitted). In

---

[8] Furthermore, the Court of Appeals' summary suspension policy is coercive. An attorney's continued opposition to the imposition of a final suspension has the practical effect of extending the length of the proceeding and therefore the length of his suspension. The summary suspension becomes a weapon to force the attorney to accede to the prompt imposition of final discipline. This is the only way that he can bring his indefinite punishment to a close.

assessing the *Eldridge* factors, it is questionable what, if any, legitimate interest the Court of Appeals has in imposing a summary suspension. There is no allegation of threat of injury to the public and even if there were, the Court of Appeals is affording Petitioner a far more restrictive procedure to that which it normally affords in cases that do actually involve the threat of harm. To the extent that the Court of Appeals' policies are intended to punish summarily and to deprive the attorney of his procedural due process, this clearly cannot be a legitimate purpose. It is also apparent from the facts of this case, and in general, that the Court of Appeals could easily reduce the risk of an erroneous deprivation by affording the attorney *any* sort of hearing whatsoever. The value of even the most basic procedural protections is obvious when compared to the alternative of summary punishment. Indeed, the attorney, whose very livelihood and professional reputation is at stake, can expect less due process than a school child facing a short suspension who must at least be afforded "an opportunity to present his side of the story." *Goss v. Lopez*, 419 U.S. 565, 581 (1975). Finally, the attorney obviously has a strong interest in his ability to practice law and to earn his livelihood as well as in not having his professional reputation permanently tarnished. This is, after all, why the Fifth Amendment protects these interests in the first place.

Nor is Petitioner's situation at all unique. See, for example, the Court of Appeals' most recent disciplinary case, *In re Zakroff*, 2007 WL 3096887 (D.C., 05-BG-740, 25 October 2007), where Bar Counsel sought Mr. Zakroff's suspension 19 July 2005, the Board issued its recommendations on 28

December 2005 and the Court of Appeals, a few days ago, returned the matter to the Board for further consideration. Petitioner has been summarily suspended for almost eight months. Mr. Richardson was summarily suspended for 22 months before he petitioned this Court. *In re Richardson*, 759 A.2d at 651. Mr. Zakroff has now been summarily suspended for more than two years with no prospects for a resolution anytime in the near future.

The practice in this Court is even more draconian than that of the Court of Appeals. That court at least relies on foreign discipline prior to suspending an attorney. This Court's Rule 8.1 mandates summary suspension even in an *original* proceeding. This Court's summary suspension orders are also published orders whereas the orders in the Court of Appeals are usually unpublished. This results in an immediate and permanent injury to the attorney's professional reputation. This Court also holds the dubious record for the longest summary suspension. See *In re Powell*, 389 U.S. 924 (1967) and *In re Powell*, 512 U.S. 1202 (1994). Ms. Powell's 16 years in purgatory was so long that her case had to be transferred to a special docket (No. S-3).

Many hundreds of fellow lawyers have been suspended without procedural due process in both courts since the policy of summary suspension was first instituted by this Court in 1930. Clearly, it is time that the practice was brought to an end – both here and in the Court of Appeals. [9]

---

[9] "[T]he right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance." *Ohio ex rel. Bryant v. Akron Metropolitan Park District*, 281 U.S. 74, 80 (1930). The Court of

C. The Court of Appeals' summary suspension rule is incompatible with this Court's mandate that "an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'"

The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.". The First Amendment applies directly to the government of the District of Columbia. See, for example, *Boos v. Barry*, 485 U.S. 312 (1988).

"The rules governing the professional conduct of attorneys in large measure regulate communication and expression, and not just non-expressive conduct, thus implicating the First Amendment in their application." *State ex rel. Oklahoma Bar Assn. v. Minter*, 2001 Ok. 69, 37 P.3d 763, 774-5, note 55 (2001). See *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. at 653, note 15. The Court of Appeals summarily suspended Petitioner's right to

---

Appeals, by definition, provides no due process in a summary suspension and, since the Court of Appeals is both the tribunal of first instance and the highest local court in the District of Columbia, there is also no right of appeal. The situation is identical in this Court where no due process is afforded prior to suspension and no appeal is possible from the highest court in the land.

practice law. Such an order prohibits Petitioner's speech before the courts and prohibits his speech to clients. Furthermore, Petitioner is being punished in the District of Columbia for the exercise of his speech rights in Connecticut – speech which has been highly critical of Connecticut's judicial administration. Petitioner's "words were directed at public officials and their conduct in office." [10] *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991) (Kennedy, J.). Speech "relating to alleged governmental misconduct ... has traditionally been recognized as lying at the core of the First Amendment." *Butterworth v. Smith*, 494 U.S. 624, 632 (1990).

> The judicial system, and in particular our criminal justice courts, play a vital part in a democratic state, and the public has a legitimate interest in their operations. See,

---

[10] Petitioner argued before Connecticut's Appellate Court, and again before the Board, that the Connecticut Superior Court judge's "purpose in instituting his disciplinary proceeding was specifically to undermine the criminal proceeding to prevent that proceeding from becoming an embarrassment to his administration." (Appellate Court Opposition to State's Motion to Dismiss; Board Response to Statement of Bar Counsel, p. 30.) At the time, the judge was "negotiating within the judicial branch administration for his next posting" (Board Response to Statement of Bar Counsel, p. 33.) As Petitioner argued, Connecticut "[j]udges who bring disrespect upon the judiciary often find themselves punished through the system of assignments". Id. "Connecticut judges speak of [this as] being 'sent to Siberia'". Id (quoting Lynne Tuohy, *Rowland Sowed Judicial Scandal*, Hartford Courant, 30 April 2006). Petitioner has argued that the problems within the Connecticut judiciary stem from ex-Governor Rowland who "was sent to prison for corruption and is currently on probation." Id., citing *Mr. Rowland: After The Fall*, Hartford Courant, 20 June 2007.

> e.g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838-839 (1978). "[I]t would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980). Public vigilance serves us well, for "[t]he knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.... Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." *In re Oliver*, 333 U.S. 257, 270-271 (1948).

Gentile, Id. 501 U.S. at 1035 (Kennedy, J.).

> [I]n cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion on the field of free expression." *New York Times Co. v. Sullivan*, [376 U.S. 254, 284-286 (1964)]. See also *NAACP v. Claiborne Hardware, Co.*, 458 U.S. 886, 933-934 (1982); *Greenbelt Cooperative Publishing Assn. v. Bresler*, 398 U.S. 6, 11 (1970); *St. Amant v. Thompson*, 390 U.S. 727, 732-733 (1968).

Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 499 (1984). This is especially true where "there is no intermediate court, and [the

appellate court is] the only court of review." *Easley v. Cromartie*, 532 U.S. 234, 243 (2001).

The Court of Appeals' summary disciplinary rule, D.C. Bar Rule XI, § 11(d), mandates suspension "forthwith". The Rule precludes any sort of review and is clearly in conflict with this Court's mandate that an appellate court "make an independent examination of the whole record" in cases, such as this, which allege the infringement of First Amendment protected core speech. The Court of Appeals' failure to afford any sort of review is particularly egregious where, as is the case here, Petitioner is still awaiting appellate review in the original disciplining state.

D. In this exceptional situation where egregious error has been committed, considerations of public policy and the sound administration of justice require the Supreme Court to exercise its jurisdiction.

The District of Columbia Court of Appeals is a court created by Congress pursuant to Article 1, Section 8, Clause 17 of the Constitution. D.C. Code § 11-101.

> [While] it has been the practice of the Court to defer to decisions of the courts of the District of Columbia on matters of exclusive concern..., it is clear that [this] approach ... is a matter of judicial policy, not a matter of judicial power. Acts of Congress affecting only the District, like other federal laws, certainly come within this Court's Art. III jurisdiction, and thus we are not prevented from reviewing the decisions

> of the District of Columbia Court of Appeals interpreting those Acts in the same jurisdictional sense that we are barred from reviewing a state court's interpretation of a state statute.

Whalen v. United States, 445 U.S. 684, 687-88 (1980).

> The rule that this Court ordinarily will refrain from reviewing decisions dealing with matters of local law in the District of Columbia is a sound and necessary one. But it is not to be applied without discretion. Like most rules, this one has its exceptions. And those exceptions are grounded primarily in considerations of public policy and of sound administration of justice.

Fisher v. United States, 328 U.S. 463, 490 (1946) (Murphy, J., dissenting). "Our policy is not to interfere with the local rules of law which [the District's courts] fashion, save in exceptional situations where egregious error has been committed." Id., at 476 (opinion of the Court).

The Court of Appeals has acknowledged that "decisions of the United States Court of Appeals rendered prior to February 1, 1971 ... constitute the case law of the District of Columbia." *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C., 1971). In 1937, the United States Court of Appeals for the District of Columbia ("Circuit Court"), citing *Ex parte Garland* and analogous cases, overturned an identical summary interim suspension because "the order of suspension was entered without notice or hearing and without

opportunity to the accused to explain the transaction and, if he could, to vindicate his conduct." *Laughlin v. Wheat*, 95 F.2d 101, 102 (D.C. Cir., 1937). The Circuit Court was interpreting Title 18, § 55 of the Code of the District of Columbia 1929 which is identical in every meaningful way to the current version of D.C. Code § 11-2503(b). Id., 95 F.2d at 101. *Laughlin* remains good law and in fact, the Court of Appeals acknowledged the continuing validity of *Laughlin* in *In re Cummings*, 466 A.2d 1224, 1225 (D.C., 1983).

Nonetheless, in 1989, the Court of Appeals implemented D.C. Bar Code XI, § 11, including the summary suspension provisions contained in subsection 11(d). Order re Amendments to D.C. Bar Rule XI on Disciplinary Proceedings, No. M-167-88 (09/01/89). In the *only* District of Columbia case since the enactment of D.C. Rule XI, § 11(d) to consider the validity of the Court of Appeals' new rule, that court said that "[D.C. Code § 11-2503(b) provided] clear authority for a temporary suspension under D.C. Bar R. XI § 11(d) pending final disposition of the reciprocal disciplinary proceeding." *In re Richardson*, 692 A.2d at 430. The *Richardson* division neither acknowledged or, apparently, considered the binding precedent of *Laughlin*. Nor could the division have overruled *Laughlin* had it considered it.

> As a matter of internal policy, [the Court of Appeals has] adopted the rule that no division of this court will ... refuse to follow a decision of the United States Court of Appeals rendered prior to February 1, 1971, and that such result can only be accomplished by this court en banc.

M.A.P. v. Ryan, 285 A.2d. at 312 (footnote omitted).

The Court of Appeals has no constitutionally derived powers. The jurisdiction of the District's court derives solely from Congress. *In re Kerr*, 424 A.2d at 98-99 citing *Palmore v. United States*, 411 U.S. at 397. This includes the Court of Appeals' power to discipline. Id. See D.C. Code § 11-2501, etc. That the *Laughlin* court was necessarily interpreting the jurisdictional boundaries of the statute is made clear by the Circuit Court's comment that "the court, notwithstanding the provisions of the statute, was *without power* to strike petitioner's name from the list of attorneys of the court pending notice and hearing." *Laughlin*, 95 F.2d at 101 (emphasis added). By acting beyond the boundaries of the statute as interpreted by the Circuit Court, the Court of Appeals is acting beyond its subject matter jurisdiction in promulgating and enforcing D.C. Bar Rule XI, § 11(d). And the exercise of this Court's supervisory powers is particularly appropriate where a subordinate federal court has exceeded its Congressionally delineated jurisdiction. See *Bruner v. United States*, 343 U.S. 112 (1952).

E. Jurisdiction and justiciability. The decision below is final and is not moot.

The order summarily suspending Petitioner's right to practice law was denominated by the Court of Appeals as a suspension "pending final disposition of this proceeding". Nonetheless, the judgment suspending Petitioner is final for purposes of this Court's certiorari jurisdiction.

> [T]he test is not whether under local rules of practice the judgment is denominated final ... but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court.

Department of Banking v. Pink, 317 U.S. 264, 268 (1942).

> [s]ince the order provides in terms that it shall remain in effect until further modification by the court and since there is no indication that any modification affecting the issues presently before us will be forthcoming at any time in the near future, the judgment below [suspending Petitioner] is clearly final for purposes of review by this Court.

Amalgamated Food Emp. Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 312, note 5 (1968).

Petitioner's indefinite suspension is no less punitive than every other suspension ordered by the Court of Appeals. Petitioner is obviously prohibited from practicing law. But beyond that, no attempt has been made by the Court of Appeals to mitigate or limit any of the injuries caused by the suspension. In fact, Petitioner was required by D.C. Bar Rule XI, § 14(g), and by the suspension order itself, to file an affidavit confirming that he had notified various categories of clients and parties of his suspension. (6 March 2007 Order, p. 2, ¶ 3.) Needless to say, this adverse publicity immediately and permanently injures an

attorney's reputation. A suspension which has been implemented, is having its full force and effect and will, in all likelihood, significantly exceed the length of any suspension ultimately ordered by the Court of Appeals, can only be viewed as a final order and not subject to further review.

Indeed, not just the issue of Petitioner's suspension, but all of the issues then before the Court of Appeals were fully adjudicated by that court's 6 March 2007 order and there then remained no issues pending in that court. This was confirmed by the conclusion to that order which required "that Bar Counsel advise the Court if the matter is concluded without the necessity of further court action." [11] (6 March 2007 Order, p. 2, ¶ 4.)

Furthermore, the Court of Appeals did itself treat Petitioner's summary suspension as a final order. Court of Appeals Rule 40 provides that "a petition for rehearing by the division may be filed within 14 days after entry of judgment." Rule 35(c) provides for a similar time frame for Petitions for Rehearing En Banc. Petitioner moved to extend the date to petition for rehearing and then did petition for rehearing. The motion for extension was granted by the division and the petition for rehearing en banc denied by the

---

[11] Only Bar Counsel and Petitioner were parties before the Court of Appeals at the initial petition stage. D.C. Bar Rule XI, § 11(b). The Board has no interest in Petitioner's summary suspension. The Board gained jurisdiction solely to report and recommend through the order of the Court of Appeals which suspends the attorney. (6 March 2007 Order, p. 2, ¶ 1.) See also D.C. Bar Rule XI, § 11(c). Obviously, the roll of the Board changes from that of reporting and recommending to that of an advocate championing its Report and Recommendations once the Board files that Report with the Court of Appeals.

full court. (29 March 2007 Order; 12 July 2007 Order). [12]

But even if the Court of Appeals' summary suspension order were not viewed as being separate from the disciplinary action before the Board, it is clear that the suspension order must be viewed as a collateral order under this Court's collateral order doctrine. Petitioner's constitutional claims are "separable from, and collateral to, rights asserted in the [Board] action". *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). The issues considered by the Board are unrelated to Petitioner's suspension by the Court of Appeals. *Local No. 438 Const. and General Laborers' Union AFL-CIO v. Curry*, 371 U.S. 542, 548-52 (1963). And the rights affected by the Court of Appeals' order suspending Petitioner are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." Id. If not reviewed now by this Court, the suspension order will be "effectively unreviewable on appeal" as Petitioner's current suspension will be displaced by whatever action the Court of Appeals ultimately takes based upon the Board's recommendation. *Firestone Tire & Rubber*

---

[12] Petitioner drew the attention of the Court of Appeals to the finality issue in his Petition for Rehearing En Banc, p. 1, note 1. That court's handling of Petitioner's Petition is supported by District of Columbia case law. "Obviously, the judge's order did not dispose of everything in the case that could be litigated in the future.... The broader controversy cannot be deemed to have been fully resolved until [all] issues .... have been finally decided.... Although, at least potentially, much more remained to be done in the case, there was no unresolved motion awaiting decision." *In re D.M.*, 771 A.2d 360, 365 (D.C., 2001).

Co. v. Risjord, 449 U.S. 368, 375 (1981), quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978). The need for an effective avenue for review is especially vital where, as is the case here, the order is "colored by First Amendment overtones". *In re Roche*, 448 U.S. 1312, 1316, note 3 (1980) (Rehnquist J., in chambers).

Clearly, the issues raised in this Petition are not now moot. However, just two days following service of Petitioner's Application to the Chief Justice for an extension of time, the Board filed their Report and Recommendations with the Court of Appeals. (3 October 2007 Board Report and Recommendations.) This filing commenced a fresh proceeding before the Court of Appeals. The Board's action does not affect Petitioner's status. He still remains summarily suspended. Petitioner's summary suspension will not end until the Court of Appeals finally determines the Board's Report and Recommendations. Petitioner has no way to know when that summary suspension will finally end.[13] Nonetheless, there is the potential, at least, for the Court of Appeals to finally determine the Board's Report and Recommendations prior to this Court's consideration of the appeal should this Petition be granted. If that were to happen, then Petitioner's summary suspension would merge with whatever determination the Court of Appeals made on the Board's Report and Recommendations. This, in turn, would implicate justiciability in this Court.

---

[13] For example, in the most recent Court of Appeals disciplinary case, that court waited 22 months before considering the Board's Report and Recommendations in *In re Zakroff*. And even then, the Court of Appeals did not finally determine the matter.

The issues raised in this Petition do appear to present the "exceptional situation" which is likely "capable of repetition, yet evading review." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). This Court's "capable-of-repetition doctrine" requires that "(1) the challenged action [be] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [be] a reasonable expectation that the same complaining party [will] be subject to the same action again," Id. Consideration of the first criteria must await further factual development. As regards the second criteria, Bar Counsel has only asked that Petitioner be suspended and not that he be disbarred. Petitioner will remain a member of the District of Columbia Bar as well as other foreign bars. It is foreseeable that he would be summarily suspended again at any time. This is especially true given his history of outspoken criticism of the courts. Furthermore, the threat of summary suspension continues to chill Petitioner's exercise of his First Amendment protected speech and especially of that speech which is critical of the courts and of the administration of government. See *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 775 (1978). The threat of future prosecutions without due process and the chill that this has on Petitioner's speech create a continuing personal interest in this appeal which goes well beyond this one specific summary suspension. Petitioner would like to feel assured that he will not again be summarily suspended without due process and it is for this reason that he is pursuing this Petition.

CONCLUSION

A writ of certiorari should issue so that this Court can vacate the order of the Court of Appeals and bring to a close the ancient practice of summary attorney discipline without procedural due process.

Respectfully submitted,

Stephen J. Williams,
Petitioner
12 September Road
Storrs
Connecticut 06268-2806
USA
+1-860-450-1288

APPENDIX

A. 6 March 2006 Court of Appeals Order

[Page 1]

District of Columbia
Court of Appeals

FILED
Mar -6 2007
District of Columbia
Court of Appeals

No. 06-BG-682

In the Matter of
STEPHEN JOHN WILLIAMS, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals
Bar Registration No. 422088

BDN: 295-05

BEFORE: Ruiz and Fisher, Associate Judges; and Kern, Senior Judge.

ORDER

On consideration of Bar Counsel's petition to suspend respondent from the practice of law pursuant to D.C. Bar Rule XI, § 11 (d), respondent's motion for an extension of time within which to file a response to Bar Counsel's proposed order, respondent's motion to unseal, respondent's lodged opposition, respondent's motion to stay pending

further proceedings, Bar Counsel's reply to respondent's opposition, Bar Counsel's correction to respondent's opposition, and respondent's reply and it appearing that the Court has received a certified copy of an order of the State of Connecticut Superior Court, Danielson [sic] County, suspending respondent, it is accordingly, pursuant to D.C. Bar Rule XI, § 11 (d),

ORDERED that respondent's motion for an extension of time within which to file respondent's lodged opposition is granted and the Clerk is directed to file respondent's lodged opposition. It is

FURTHER ORDERED that respondent's motion to unseal is denied as moot. It is

FURTHER ORDERED that respondent's motion to stay pending further proceedings is denied. It is

FURTHER ORDERED that respondent is suspended from the practice of law in the District of Columbia pending final disposition of this proceeding, effective on the entry date of this order, and it is

FURTHER ORDERED that Bar Counsel inform the Board on Professional Responsibility of its position regarding reciprocal discipline within 30 days of the date of this order. Thereafter, respondent shall show cause before the Board of Professional Responsibility, if cause there be, within 10 days why identical, greater or lesser discipline should not be imposed in the District of Columbia. It is

A true Copy
Test:

Garland Pinkston, Jr.
Clerk of the District of Columbia Court of Appeals
By /E. M. Brooks/
DEPUTY CLERK

[Page 2]

06-BG-682

FURTHER ORDERED that the Board on Professional Responsibility is directed to recommend promptly thereafter to this Court whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board instead elects to proceed *de novo* pursuant to D.C. Bar Rule XI, § 11. It is

FURTHER ORDERED that the Clerk shall cause a copy of this order and the order of the State of Connecticut Superior Court, Danielson [sic] County, to be directed to the Chair of the Board on Professional Responsibility and transmitted to respondent. It is

FURTHER ORDERED that respondent's attention is drawn to the requirements of D.C. Bar Rule XI, § 14 relating to suspended attorneys and to the provisions of 16 (c) dealing with the timing of eligibility for reinstatement as related to compliance with § 14, including the filing of the required affidavit. It is

FURTHER ORDERED that Bar Counsel advise the Court if the matter is concluded without the necessity of further court action.

PER CURIAM.

Copies to:

Stephen J. Williams, Esquire
12 September Road
Storrs Mansfield, CT 06268

Martin R. Baach, Esquire
Chair, Board on Professional Responsibility
409 E Street, N.W., Suite 208
Washington, D.C. 20001

Wallace E. Shipp, Jr., Esquire
Bar Counsel, Office of Bar Counsel
409 E Street, N.W., Suite 228
Washington, D.C. 20001

emb

B. 12 July 2007 Court of Appeals Order

District of Columbia
Court of Appeals

FILED
July 12 2007
District of Columbia
Court of Appeals

No. 06-BG-682

In the Matter of
STEPHEN JOHN WILLIAMS, ESQUIRE
A Member of he Bar of the
District of Columbia

Court of Appeals
Bar Registration No. 422088

BDN: 295-05

BEFORE: Washington, Chief Judge; Farrell, Ruiz, Reid, Glickman, Kramer, Fisher, Blackburne-Rigsby, and Thompson, Associate Judges.

ORDER

On consideration of respondent's petition for rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED that the petition for rehearing en banc is denied.

PER CURIAM.

Copies to:

Stephen J. Williams, Esquire
12 September Road
Storrs Mansfield, CT 06268-2806

Martin R. Baach, Esquire
Chair, Board on Professional Responsibility
409 E Street, N.W., Suite 208
Washington, D.C. 20001

Wallace E. Shipp, Jr., Esquire
Bar Counsel, Office of Bar Counsel
409 E Street, N.W., Suite 228
Washington, D.C. 20001

C. U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

D. U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

E. D.C. Code § 11-2503(b)

Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

(b) Except as provided in subsection (a) [not relevant here], a member of the bar may not be censured, suspended, or expelled under this chapter until written charges, under oath, against that member have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the

court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon that member by mail, publication, or otherwise as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof.

F. D.C. Bar Rule XI, § 3(c)

Temporary suspension or probation.

(1) On petition of the Board authorized by its Chairperson or Vice Chairperson, supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public, the Court may issue an order, with such notice as the Court may prescribe, temporarily suspending the attorney or imposing temporary conditions of probation on the attorney, or both. Any order of temporary suspension or probation which restricts the attorney's maintenance or use of a trust account shall, when served on any bank maintaining an account against which the attorney may make withdrawals, serve as an injunction barring the bank from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court. An order of temporary suspension issued under this subsection shall preclude the attorney from accepting any new cases or other legal matters, but shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the

order; however, any fees tendered to the attorney during that thirty-day period or at any time thereafter while the temporary suspension is in effect shall be deposited in a trust account, from which withdrawals may be made only as directed by the Court.

(2) Where issues of fact appear to be presented by the Board's petition or by any response of the attorney, the Court may appoint a special master to preside at a hearing at which evidence will be presented concerning the petition. The master shall prepare a report summarizing the evidence presented and make recommended findings of fact which, together with the record, shall be filed with the Court within fifteen days of the Court's order of appointment.

G. D.C. Bar Rule XI, § 11

Reciprocal Discipline

(a) Definition. As used in this section, "disciplining court" shall include any court of the United States as defined in Title 28, Section 451 of the United States Code, the highest court of any state, territory, or possession of the United States, and any other agency or tribunal with authority to disbar or suspend an attorney from the practice of law in any state, territory, or possession of the United States.

(b) Notification. It shall be the duty of Bar Counsel to obtain copies of all orders of discipline from other disciplining courts. Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court,

Bar Counsel shall obtain a certified copy of the disciplinary order and file it with the Board and with this Court. In addition, any attorney subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by a disciplining court outside the District of Columbia or by another court in the District of Columbia, shall promptly inform Bar Counsel of such action.

(c) Standards for reciprocal discipline. Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:
(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or
(3) The imposition of the same discipline by the Court would result in grave injustice; or
(4) The misconduct established warrants substantially different discipline in the District of Columbia; or
(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.
Unless there is a finding by the Board under (1), (2), or (5) above that is accepted by the Court, a final determination by a disciplining court outside the District of Columbia or by another court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

(d) Temporary suspension and show cause order. Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days.

(e) Recommendation by the Board. Promptly after the attorney's response to the order to show cause is filed or, if no response is filed, promptly after the time for filing a response has expired, the Board shall recommend to the Court whether reciprocal discipline should be imposed. If no order to show cause has been issued, the Board shall recommend to the Court whether reciprocal discipline should be imposed promptly after receiving a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been subjected to professional disciplinary action, other than suspension or disbarment, by a disciplining court outside the District of Columbia or by another court in the District of Columbia. A copy of the Board's recommendation shall be served on the attorney. If the Board recommends to the Court that reciprocal discipline be imposed, the attorney may

file with the Court, within thirty days after service of the Board's recommendation, an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted.

(f) Action by the Court.
(1) When no opposition to the recommendation of the Board has been timely filed, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing an opposition.
(2) In matters not falling under paragraph (1) of this subsection, the Court shall impose the identical discipline unless the attorney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection (b) of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

(g) Action when reciprocal discipline is not recommended. If the Board concludes that reciprocal discipline should not be imposed, it shall accept the facts found by the disciplining court unless it has made a finding under (1), (2), or (5) of subsection (b) of this section. In the absence of such a finding, the Board shall either:
(1) report to the Court its recommendation as to the appropriate discipline, or

(2) refer the matter to a Hearing Committee for its recommendation as to the appropriate discipline, or (3) direct Bar Counsel to institute such proceedings as may be appropriate.

A copy of the Board's decision shall be served on the attorney. If the Board makes a recommendation to the Court under (1) above, the attorney may, within thirty days after service, file with the Court an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted. If the Board makes a recommendation to the court under (1) or directs Bar Counsel to institute proceedings under (3) above, Bar Counsel may, within thirty days after service, file with the Court exceptions to the decision of the Board.

(h) Effect of stay of discipline by disciplining Court. If at any time the discipline imposed outside the District of Columbia or by another court in the District of Columbia is stayed, any reciprocal discipline imposed by this Court or by the Board shall be deferred until the stay expires.

H. D.C. Bar Rule XI, § 14

Disbarred and Suspended Attorneys

(a) Notice to clients in non-litigated matters. An attorney ordered to be disbarred or suspended shall promptly notify by registered or certified mail, return receipt requested, all clients on retainer and all clients being represented in pending matters other than litigated or administrative matters or proceedings pending in any court or agency, of the order of disbarment or suspension and of the

attorney's consequent inability to act as an attorney after the effective date of the order, and shall advise such clients to seek legal advice elsewhere.

(b) Notice to clients in litigated matters. An attorney ordered to be disbarred or suspended shall promptly notify, by registered or certified mail, return receipt requested, all clients involved in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters before any District of Columbia government agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice shall advise the prompt substitution of another attorney or attorneys. If the client fails to obtain substitute counsel before the effective date of the order, the disbarred or suspended attorney shall move pro se in the court or agency in which the proceeding is pending for leave to withdraw.

(c) Notice to adverse parties. An attorney ordered to be disbarred or suspended shall promptly notify, by registered or certified mail, return receipt requested, the attorney or attorneys for every adverse party in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters in any District of Columbia administrative agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice shall state the mailing address of each client of the disbarred or suspended attorney who is a party in the pending matter or proceeding.

(d) Delivery of client papers and property. An attorney ordered to be disbarred or suspended shall promptly deliver to all clients being represented in pending matters any papers or other property to

which the clients are entitled, or shall notify the clients and any co-counsel of a suitable time when and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

(e) Imposition of discipline pendente lite. The Court, sua sponte or on motion, may order that the discipline recommended by the Board shall take effect pending the Court's determination of the merits of the case.

(f) Effective date of discipline. Except as provided in sections 10, 11, and 13 of this rule, and in subsection (e) of this section, an order of disbarment or suspension shall be effective thirty days after entry unless the Court directs otherwise. The disbarred or suspended attorney, after entry of the order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the date of entry of the order and its effective date, the attorney may conclude other work on behalf of a client on any matters which were pending on the date of entry. If such work cannot be concluded, the attorney shall so advise the client so that the client may make other arrangements.

(g) Required affidavit and registration statement. Within ten days after the effective date of an order of disbarment or suspension, the disbarred or suspended attorney shall file with the Court and the Board an affidavit:

(1) Demonstrating with particularity, and with supporting proof, that the attorney has fully complied with the provisions of the order and with this rule;

(2) Listing all other state and federal jurisdictions and administrative agencies to which the attorney is admitted to practice; and
(3) Certifying that a copy of the affidavit has been served on Bar Counsel.

The affidavit shall also state the residence or other address of the attorney to which communications may thereafter be directed. The Board may require such additional proof as it deems necessary. In addition, for five years following the effective date of a disbarment or suspension order, a disbarred or suspended attorney shall continue to file a registration statement in accordance with Rule II, stating the residence or other address to which communications may thereafter be directed, so that the attorney may be located if a complaint is made about any conduct of the attorney occurring before the disbarment or suspension. See also section 16(c).

(h) Required records. An attorney ordered to be disbarred or suspended, other than an attorney suspended under section 13(a) or 13(c), shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the disbarment or suspension order will be available. The Court may require the attorney to submit such proof as a condition precedent to the granting of any petition for reinstatement. In the case of an attorney suspended under section 13(a) or 13(c), the Court shall enter such order as may be required to compile and maintain all necessary records. See also sections 15(a) and 15(f).

I. Sup. Ct. R. 8.1

Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

87

(2)

FILED
FEB 8 - 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-601

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REHEARING

Stephen J. Williams
Petitioner
12 September Road
Storrs, Connecticut 06268-2806
USA
+1-860-450-1288

TABLE OF CONTENTS

PROCEDURAL HISTORY 1
A. Relevant proceedings in this matter 1
B. Relevant proceedings in the related matter of Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department 3
REASON FOR GRANTING THIS PETITION FOR REHEARING 4
A. Petitioner's second petition for writ of certiorari presents similar issues and is predicated upon the same set of underlying facts. Therefore, judicial economy and equity weighs in favor of considering Petitioner's two petitions for writ of certiorari in tandem. 4
CONCLUSION 7
CERTIFICATION 1

CASES

In re Williams, 33 A.D.3d 38, 819 N.Y.S.2d 508 (1st Dept., 2006), *leave to appeal dismissed in part, denied in part*, 8 N.Y.3d 858, 863 N.E.2d 109, 831 N.Y.S.2d 105 (2007), *appeal dismissed*, 8 N.Y.3d 1007, 870 N.E.2d 687, 839 N.Y.S.2d 448 (2007), *re-argument denied*, 9 N.Y.3d 919, 875 N.E.2d 892, 844 N.Y.S.2d 173 (2007) 3

R.J. Reynolds Tobacco Co. v. Durham County, N.C., 479 U.S. 130 (1986) 3

Selling v. Radford, 243 U.S. 46 (1917) 5, 6

Williams v. District of Columbia Court of Appeals, 128 S.Ct. 1075 (Mem.) (2008) 1

Williams v. District of Columbia Court of Appeals, 128 S.Ct. 1109 (Mem.) (2008) 1

STATUTES

Judiciary Law § 90(6) 6

RULES

22 NYCRR § 603.3 6

D.C. Bar Rule X, § 3.8(f) 2

D.C. Bar Rule XI, § 11(d) 5

Sup. Ct. R. 44.1 1

Sup. Ct. R. 44.2 1

Sup. Ct. R. 8.1 5

TREATISES

Model Rules for Lawyer Disciplinary Enforcement, Rule 22 ..... 4, 5

Washington Lawyer, February 2008 2

Pursuant to Rule 44.2 of the Rules of this Court, Petitioner petitions for rehearing on Petitioner's petition for a writ of certiorari ("first Petition") directed to the District of Columbia Court of Appeals ("Court of Appeals") which was denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1075 (Mem.) (2008).

Furthermore, pursuant to Rule 44.1, Petitioner petitions this Court for rehearing on Petitioner's application for stay pending disposition of the petition for writ of certiorari which was referred to the Court by Justice Ginsburg and also denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1109 (Mem.) (07A415, 14 Jan. 2008).[1]

PROCEDURAL HISTORY

A. Relevant proceedings in this matter

Petitioner's Petition was denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1075 (Mem.) (2008). The Court also denied Petitioner's application for stay, which had been referred to the Court by Justice Ginsburg, on that same date. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1109 (Mem.) (2008).

---

[1] This Petition for Rehearing is timely filed. See 21 February 2008 letter of Mr. Jeffrey Atkins on behalf of the Clerk.

Petitioner remains suspended by the District of Columbia Court of Appeals. Petitioner has now been summarily suspended without due process for one full year. There is no expectation that Petitioner's summary suspension will end anytime in the foreseeable future.

Furthermore, shortly following the denial of certiorari by this Court, the Bar Counsel published a column in the District of Columbia Bar magazine, the *Washington Lawyer*, in which he discussed the "disciplinary action" taken against Petitioner. *Washington Lawyer*, February 2008, p. 12.[2] This column was one-sided, riddled with factual errors and showed Petitioner in a very poor light. This has served to heighten condemnation of Petitioner even though there has not been a final determination of the matter in either the original jurisdiction or in the District of Columbia. Because Bar Counsel published his column in violation of ethical rule D.C. Bar Rule X, § 3.8(f), Petitioner moved the Court of Appeals to disqualify the Office of Bar Counsel from continuing to prosecute the disciplinary action. (25 February 2008 Motion to Disqualify the Office of Bar Counsel.) That motion is currently pending before the Court of Appeals.[3]

---

[2] The column is also published in the Bar Counsel's section of the District of Columbia Bar's web site in a section entitled Bar Counsel's Column and again in a section reprinting the current issue and back issues of the magazine. http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/february_2008/barcounsel.cfm (visited 6 March 2008). Thus, Bar Counsel's columns are available to the public worldwide through Internet search engines such as Google.

[3] Bar Counsel is a respondent in this proceeding and is also the only respondent to have appeared in this Court.

B. Relevant proceedings in the related matter of Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department

Based on the same order of the Connecticut judge, and on the same principles of reciprocal discipline, and similarly without affording Petitioner a hearing, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department ("First Department") ordered that Petitioner's right to practice law in New York be suspended. Petitioner has pursued the matter through motions for leave to appeal directed to the First Department and the New York Court of Appeals, an appeal and a petition to reargue – all of which have been either denied or dismissed. *In re Williams*, 33 A.D.3d 38, 819 N.Y.S.2d 508 (1st Dept., 2006), *leave to appeal dismissed in part, denied in part*, 8 N.Y.3d 858, 863 N.E.2d 109, 831 N.Y.S.2d 105 (2007), *appeal dismissed*, 8 N.Y.3d 1007, 870 N.E.2d 687, 839 N.Y.S.2d 448 (2007), *re-argument denied*, 9 N.Y.3d 919, 875 N.E.2d 892, 844 N.Y.S.2d 173 (2007).[4]

On 10 December 2007, Justice Ginsburg ordered that Petitioner's petition for writ of certiorari in this related matter ("second Petition") may be filed no

---

[4] The appeal was dismissed by he New York Court of Appeals "upon the ground that no substantial constitutional question is directly involved." Dismissal on that basis is considered a decision on the merits. *R.J. Reynolds Tobacco Co. v. Durham County, N.C.*, 479 U.S. 130, 138-9 (1986).

later than Friday, 15 February 2008. (Application No. 07A487.)[5]

REASON FOR GRANTING THIS PETITION FOR REHEARING

A. Petitioner's second petition for writ of certiorari presents similar issues and is predicated upon the same set of underlying facts. Therefore, judicial economy and equity weighs in favor of considering Petitioner's two petitions for writ of certiorari in tandem.

Petitioner's suspension in the District of Columbia and his suspension in New York are both predicated on a policy of reciprocal discipline. Unlike in this Court and in the subordinate federal courts, the reciprocal recognition by state courts of discipline originating in other jurisdictions is a relatively new phenomenon. That phenomenon has been driven, in large measure, by Rule 22 of the Model Rules for Lawyer Disciplinary Enforcement as promulgated by the ABA's Standing Committee on Professional Discipline ("ABA Rule 22").[6] The rule provides as a policy goal that:

---

[5] The Petition for Certiorari will be timely. See 21 February 2008 letter of Mr. Erik Fossum on behalf of the Clerk.

[6] The ABA Model Rules for Lawyer Disciplinary Enforcement were initially adopted by the American Bar Association House of Delegates on August 11, 1993 and subsequently amended in 1995, 1999 and 2002. Model Rules for Lawyer Disciplinary Enforcement, 2007 Edition, copyright page.

> If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

Commentary to ABA Rule 22.

Unfortunately, the immediacy and automaticity which the rule has as its goal, is directly at odds with this Court's guidelines for reciprocal discipline as contained in *Selling v. Radford*, 243 U.S. 46, 51-52 (1917), that the attorney first be afforded an opportunity to raise certain specific defenses. Some jurisdictions, such as the District of Columbia, and even this Court, have attempted to resolve this dilemma by providing for immediacy through provisions in their rules for automatic interim suspensions. D.C. Bar Rule XI, § 11(d); Sup. Ct. R. 8.1. Still other jurisdictions, which make no provision in their reciprocal discipline rules for the automatic interim suspension of attorneys, attempt to resolve the dilemma by streamlining their proceedings to such an extent that sometimes their proceedings do not even comport with their own rules. 22 NYCRR §

603.3; Judiciary Law § 90(6). The First Department falls into this latter category.

While Petitioner's first Petition took issue with the denial of due process under an automatic interim suspension rule and Petitioner's second Petition will challenge the First Department's policy of imposing final reciprocal discipline without affording an attorney a hearing, it is readily apparent that there is a much broader issue at play here which is whether *Selling*, decided in 1917, should in fact be *the* due process standard applicable to the states or whether the states must be allowed to fashion their own policies and practices on reciprocal discipline.

Because Petitioner's two petitions are simply two sides of the same coin, it should prove useful to the Court to consider both petitions in tandem. The District of Columbia and New York are today two of the most active jurisdictions as regards reciprocal discipline. If this Court were to grant certiorari, then it would be appropriate to afford both of these important jurisdictions the opportunity to be heard on the issue. Finally, considering both petitions in tandem would be most equitable. If this Court were to grant Petitioner's second Petition, then it would clearly be inequitable to allow Petitioner's suspension in the District of Columbia to continue unchallenged. This is especially true given the fresh due process violations which have taken place in that jurisdiction since the Court denied the first Petition.

CONCLUSION

For the forgoing reasons, Petitioner asks that the Court grant this Petition for Reargument so that it can consider whether to grant certiorari on this first Petition in tandem with its consideration of Petitioner's petition for writ of certiorari directed towards the New York Court of Appeals.

Respectfully submitted,

Stephen J. Williams,
Petitioner
12 September Road
Storrs
Connecticut 06268-2806
USA
+1-860-450-1288

CERTIFICATION

I certify, under penalty of perjury, that the grounds of this Petition are restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

I further certify, under penalty of perjury, that his Petition is presented in good faith and not for delay.

_____

Stephen J. Williams,
Petitioner